IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMM. FOR JUDGMENT NO.578 OF 2003

IN

SUIT NO.573 OF 2003

The Securities & Exch.Board of India.. Plaintiff

versus

Ram B.Salve & anr .. Defendants

Mr.Kumar Desai i/b M.Sethna for Plaintiff

Mr.J.M.D'Silva for Defendants

CORAM : D.G. KARNIK, J

DATED : 6th April 2005.

P.C:-

1. Heard learned counsel for the parties. This Summons for Judgment is taken out by the plaintiff for recovery of the amount of security deposit paid by it under the leave and licence agreement.

2. The suit flat originally belonged to Abdul Hamid Abdul Razak Sabooni and others. By an agreement of leave and licence dated 26th February, 1996 Abdul

Hamid granted leave and licence to the plaintiff to use and occupy the said flat on a monthly licencee fee of Rs.10,000/-. The plaintiff having agreed to deposit security deposit of Rs.2,20,00,000/- paid the same and a separate agreement of even date was entered into between Abdul Hamid and the plaintiff regarding the security deposit. Under the said agreement of security deposit Abdul Hamid and others agreed to repay to the plaintiff the amount of the security deposit of Rs.2,20,00,000/- on the plaintiff handing over the possession of the said premises to the licencor on expiry of the period of licence.

3. Before expiry of the period of licence granted by Abdul Hamid and others under the leave and licence agreement dated 26th February, 1996, they sold the said flat to the present defendants. Therefore, a tripartite agreement was entered into between the defendants as new owners, the plaintiff as the licencee and Abdul Hamid and others as erstwhile licensors on 31st March, 1998. Under the said agreement, the parties agreed that the previous leave and licence agreement as well as security deposit agreement, both dated 26th February 1996, would continue to remain in force, and that the obligations

of the erstwhile licensors under the said two agreements would be taken over by the defendants. The plaintiffs were thus allowed to continue in the possession of the said flat premises till the expiry of the period under the original leave and licence agreement dated 26th February, 1996. On the expiry of the period of the said licence, the plaintiff was to return the possession of the said premises to the defendants as the new licensors and the defendants were to refund the amount of security deposit to the plaintiff.

4. Before the expiry of the said period of licence on 26th February 2004, discussions took place between the plaintiff and the defendants when it was agreed that the period of the leave and licence would be extended by four months up to 25th June, 2001. By a letter dated 13th February, 2001 the defendants confirmed the extention of the said period of licence and further agreed that the defendants would refund the amount of the security deposit of Rs.2,20,00,000/- on the plaintiff vacating the premises. It was further agreed that instead of repayment of the deposit in lump sum at the time of plaintiff’s vacating the said flat the defendants would refund the amount of the

security deposit by five instalments as follows :

i) Rs.10,00,000/- on or before 28/2/2001

ii) Rs.10,00,000/- on or before 31/3/2001

iii) Rs.10,00,000/- on or before 30/4/2001

iv) Rs.10,00,000/- on or before 31/5/2001

v) Rs.1,80,00,000/- on or before 25/6/2001 at the time of vacating the flat.

5. The defendants paid the first two instalments of Rs.10,00,000/- each but failed and neglected to pay the balance amount of Rs.2,00,00,000/-. By the letter dated 15th April, 2002 the plaintiff informed to the defendants of their intention to vacate the said flat by 16th April, 2002 and offered to hand over its possession to the defendants subject to the defendants refunding the amount of the security deposit. By another letter dated 8th May, 2002 the plaintiff confirmed that they have vacated the said flat and kept it vacant and offered to hand over the possession on the defendants refunding the security deposit. The

facts as mentioned above are not disputed by the defendants.

6. Learned counsel for the defendants submits that the suit is not maintainable as a summary suit and therefore the defendants are entitled to an unconditional leave to defend the suit. He further submits that this court has no jurisdiction to entertain and try this suit. Claim for refund can be made only to the Competent Authority under the Maharashtra Rent Control Act, 1999 and therefore this court has no jurisdiction to entertain and try this suit.

7. Section 24 of the Maharashtra Rent Control Act, 1999 provides that on failure of the licencee to deliver the possession of the licenced premises on expiry of the period of licence, the licencor shall be entitled to recover the licensed premises from the licencee by making an application to the Competent Authority constituted under the Act. Jurisdiction for ordering dispossession of the licencee in the event the licencee fails to deliver the possession of the licenced premises to the licensor on expiry of the period of licence is conferred on the Competent

Authority. However, no jurisdiction has been conferred under section 24 or any other provisions of the Maharashtra Rent Control Act, 1999 on the Competent Authority to pass a decree or order against a licencor for refunding of the security deposit. In the absence of any provision conferring such jurisdiction on the Competent Authority and in the absence of any express provision in the statute excluding the jurisdiction of a civil court to pass an order and decree for the recovery of the security deposit paid by the licencee to the licensor the ordinary civil court would have the jurisdiction to entertain and try a suit for recovery of the security deposit. This court in its ordinary original civil jurisdiction would therefore have the jurisdiction to entertain and try the present suit. Therefore, the contention of the defendants that this court does not have jurisdiction to try the suit has no merit.

8. In Motorola India Limited vs Kiklu I.Malani of Bombay reported in AIR 2003 BOMBAY 92 this court has held that a suit which is based on a written contract executed between the licensor and the licencee for the recovery of the security deposit by the licensor on surrendering of the possession of the premises is

triable as a summary suit. I am in respectfull agreement with the view expressed therein. Hence, the contention that the suit cannot be tried as a summary suit also has no merit.

9. No other defence is raised by the defendants.

10. In the circumstances, only as an act of mercy, the defendant can be granted conditional leave to defend the suit subject to depositing in court the amount of security deposit.

11. The defendants are accordingly granted conditional leave to defend the suit subject to depositing in the Court Rs.2,00,00,000/- within four weeks. On such deposit the plaintiff shall be entitled to withdraw the said money by furnishing bank guarantee or any other security to the satisfaction of the Prothonotary and Senior Master and Registrar, (Original Side). On deposit of money the suit shall stand transferred to the list of commercial causes. The defendants shall file the written statement within eight weeks.

D.G.KARNIK, J